Commonwealth of Massachusetts
Supreme Judicial Court

APPEALS COURT DOCKET No.: 2017-P-0083

COMMONWEALTH OF MASSACHUSETTS,

Appellee

v.

JOHNELLE M. BROWN

Defendant-Appellant

On Appeal from a Judgment on a Verdict and an Order Denying a Motion for New Trial in the Cambridge Division of the Middlesex County District Court for the Commonwealth of Massachusetts

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APPELLANT'S APPLICATION FOR DIRECT APPELLATE REVIEW

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I. Request for Direct Appellate Review

Pursuant to Mass. R. App. Pro. 11, Johnelle Brown hereby requests Direct Appellate Review of the judgment and sentence that entered against her below.

II. Statement of Prior Proceedings

On June 3, 2014, Ms. Brown was arraigned on charges of Assault and Battery (G.L. c. 265, §13A(a)) and Witness Intimidation (G.L. c. 268, §13B). (R.1). [1] Ms. Brown's trial took place on January 21-22, 2015, and, after the jury returned verdicts of guilty on both counts, the Commonwealth moved for sentencing. (T.II, 41). During the afternoon of January 22, 2015, the court (Hogan, J.) convened and then suspended a sentencing hearing, revoked Ms. Brown's bail, and then reconvened the sentencing hearing on January 26, 2015, at which time it imposed the following sentence: one-year commitment to the House of Correction, suspended for two years; probation, including special conditions; and restitution. Trial Counsel filed a timely notice of appeal. (R.6).

[1] The following materials, on file with the Appeals Court, are cited thusly: Record Appendix (R.[page #]); Trial and Sentencing Transcripts (T.[volume #], [page #]); Restitution Hearing Transcript (RH.[page #]); Addendum to the Appellant's Brief (Add.[page #]).

On April 6, 2016, Ms. Brown filed a Motion pursuant to Mass. R. Crim. P. 30(b) and 31(D) ("Motion") in which she requested an evidentiary hearing, which was followed by the Commonwealth's Opposition, and Ms. Brown's Reply thereto. (R.7-112). The court denied Ms. Brown's request for an evidentiary hearing, and it heard argument on May 25, 2016 (on Ms. Brown's request to stay restitution during the pendency of the Motion, which was denied), and July 13, 2016. On December 16, 2016, the court denied the Motion with a margin order; it did not issue any findings or a memorandum of decision. (R.117) A timely notice of appeal was filed. (R.118).

On December 6, 2016, Ms. Brown filed a Motion to Resolve Restitution. (R.119-62). On January 3, 2017, the court allowed the motion, released Ms. Brown from probation, and relieved her of further restitution obligations. (R.2). On March 6, 2017, Ms. Brown filed her brief in the Appeals Court. On March 9, 2017, the Commonwealth's motion for an enlargement was allowed.

III. Short Statement of Facts Relevant to the Appeal

The underlying facts of Ms. Brown's case are inapposite to the claims of error she is asserting as the bases for Direct Appellate Review. Therefore, Ms. Brown will focus here only on her sentencing hearings.

After the jury returned their verdicts of guilty on both counts, the Commonwealth moved for sentencing, the court allowed the motion, and the Commonwealth went on to give its sentencing recommendation and to make sentence-oriented arguments regarding the facts of the case. (T.II, 41-42). Afterward, the court told Ms. Brown that "if your attorney wants you to speak, you can speak," Ms. Brown requested permission to speak, and her attorney gave that permission. (T.II, 44).

Ms. Brown then lamented that she "really wish[es that she] could have testified," and then she engaged in an exchange with the court about her not having testified. (T.II, 44). Ms. Brown began describing the facts of her case (just as the Commonwealth had been allowed to do moments earlier), stating that "when I entered that night, I asked to use the bathroom. They did not tell me that they were closed. He was outside. He was . . ." at which point the judge interrupted her saying "I'm not going to hear your side." (T.II, 44-45). The judge asked whether Ms. Brown was trying to testify there and then without being subject to cross examination, and Ms. Brown, misunderstanding the judge to be suggesting that the Commonwealth might still cross examine her, responded that she was "definitely open to

it.” (T.II, 45; R.70).

The court then, *sua sponte*, revoked Ms. Brown’s bail, ordered her to be held for the weekend, and postponed her sentencing until the following week. (T.II, 45-46; R.46, 57-58). The court did not provide Ms. Brown with any of the procedural protections required by the bail statute, G.L. c. 276, § 58, did not consider any of the substantive factors dictated by that statute, and did not issue an order stating her reasons for revoking Ms. Brown’s bail, which had been set on June 10, 2014 at $250.00. (R.1). When the court reconvened the sentencing hearing four days later, it stated that it “trust[ed] that [it had] got[ten] [Ms. Brown’s] attention by holding [her] over the weekend in custody.” (T.III, 6). This was surely the case, as Ms. Brown had absolutely no idea that there was even the remotest possibility that she would be taken into custody at all (never mind in the immediate wake of her trial, but before she was sentenced), and she did not know how long she was going to be held. (R.70-71, 83-84).

IV. Statement Of Issues Of Law Raised By The Appeal[2]

1. For centuries, a failure by a sentencing court to provide allocution was recognized as reversible error, and Massachusetts cases indicating that there is no constitutional right to allocution appear to be in conflict with Supreme Court jurisprudence. Ms. Brown was initially invited to speak by the sentencing court, but, despite the Commonwealth's having been afforded a lengthy opportunity to make sentencing argument, Ms. Brown was abruptly cut off with the court remarking "I'm not going to hear your side." Was Ms. Brown's right to allocution violated? (This issue was not preserved)

2. For double-jeopardy purposes, the clearest proof that a deprivation of liberty, purportedly effected for regulatory purposes, was actually punitive will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty. Upon denying her allocution, Ms. Brown's sentencing court revoked her bail without following any of the procedural or substantive requirements of the bail statute, held her in custody over the weekend, and stated during the subsequent sentencing hearing that she had revoked Ms. Brown', not to give effect to the bail statute's purpose of protecting a defendant's liberty, but instead to get Ms. Brown's "attention." Did the imposition of a formal sentence after the sentencing court had already punitively revoked Ms. Brown's bail violate Ms. Brown's double-jeopardy rights? (This issue was not preserved)

[2] While Ms. Brown reserves her right to have all of the claims of error in her brief to the Appeals Court reviewed by the Supreme Judicial Court should this application be allowed, she focuses in this application exclusively on those claims of error that form the basis for Direct Appellate Review.

V. Brief Argument

a. Ms. Brown was Deprived of her Rights to Allocution and Due Process

Massachusetts cases holding that defendants do not have a constitutional right to allocution were wrongly decided. It appears that the first Massachusetts case to address this question directly was Com. v. Curry, 6 Mass. App. Ct. 928 (1978), in which the appeals court held that the "defendant had no constitutional or other right of allocution." Id. At 928 (citing Jeffries v. Com., 12 Allen 145, 153 (1866); Hill v. United States, 368 U.S. 424 (1962); United States v. Leavitt, 478 F.2d 1101, 1104 (1st Cir. 1973)). The Supreme Judicial Court has never approved of Curry, and none of the cases that Curry cited provide any support for Curry's holding.

Jeffries left the question of whether the defendant had a right to allocution unanswered; the defendant had been given an opportunity to personally speak to the sentencing judge. Id. at 153. In Hill, the Court held only that a failure to provide allocution does not provide "grounds for a successful collateral attack"; Hill does not speak to whether such a failure is reversible error on direct appeal. Id. at 26.[3] Finally,

[3] The continuing validity of Hill is questionable because of a compelling dissent joined by four justices. See id. at 430-35 (Black, J. dissenting).

in Leavitt, the defendant was allowed to address the judge at sentencing, and the only issue was that he was drunk at the time. Id. at 1104. Therefore, anything in Jeffries, Hill, or Leavitt about whether there is a constitutional right to allocution is dicta.

Even in Green v. United States, 365 U.S. 301 (1961), which located the right of allocution in Fed. R. Crim. Pro. 32(a), rather than the Constitution, the Supreme Court's opinion was accompanied by a stirring dissent by Justice Frankfurter. That dissent, written for four Justices, states that the "most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself," and that the "design of Rule 32(a) did not begin with its promulgation; its legal provenance was the common-law right of allocution. As early as 1689, it was recognized that the court's failure to ask the defendant if he had anything to say before sentence was imposed required reversal." Green, 365 U.S. at 304 (Frankfurter, J. dissenting). The Reporter's Notes for Mass. R. Crim. Pro. 28 quote directly from this dissent.

Curry is also wrong because, while it "has not directly determined whether or to what extent the concept of due process of law requires that a criminal

defendant wishing to present evidence or argument presumably relevant to the issues involved in sentencing should be permitted to do so," the Supreme Court has "[a]ssum[ed], without deciding, that the Constitution does require such an opportunity . . . ." McGautha v. California, 402 U.S. 183, 218-19 (1971) vac'd on other grounds sub nom. Crampton v. Ohio, 408 U.S. 941 (1972).

Even if the Massachusetts cases holding that there is no constitutional right to allocution were correctly decided, Ms. Brown is still entitled to relief because of the unique circumstances of her sentencing hearings. Ms. Brown was invited to speak, then cut off by the sentencing court with the comment "I'm not going to hear your side," despite the court's having allowed the Commonwealth to address the same topics in aggravation that Ms. Brown was trying to address in mitigation.

These circumstances distinguish Ms. Brown's case from those where relief was not granted. Cf. Com. v. Rosadilla-Gonzalez, 20 Mass. App. Ct. 407, 415-16 (1985) (sentencing court does not invite defendant to speak); Green, 365 U.S. at 304-05 (ambiguous whether there was invitation to speak). Even if Ms. Brown had no right to allocution at the outset of the hearing, she at least had a right to the same opportunity as the Commonwealth

to respond to the sentencing court's invitations.

The prejudice emanating from this error is clear. In a survey of federal district court judges, over 85% (408) of the responding judges indicated that allocution was extremely important, very important, or somewhat important. Mark W. Bennett & Ira P. Robbins, *Last Words: A Survey and Analysis of Federal Judges' Views on Allocution in Sentencing*, 65 ALA. L. REV. 735, 802, Table 28 (2014). 99% of the responding judges favored maintaining the right to allocution. Id.

Moreover, one federal judge has observed that

> when the allocution is raw with begging and bargaining and terror and fear, I will take my glasses off as I look directly into the defendant's eyes. When I do, the defendant's facial features becomes fuzzy and obscured and indistinct even though I appear to be focused on the face. I know that doing so is cowardly. But when I reject the plea for mercy, it helps to get me through the long nights that follow.

Hon. Richard G. Kopf, *My dirty little secret: How I obscure the suffering of the defendant during allocution*, HERCULES AND THE UMPIRE, goo.gl/8oV1Wb.

In this case, the sentencing court's command that it was "not going to hear your side," after it had invited Ms. Brown to speak, but before she had said much of anything, strongly indicates that Ms. Brown's few remarks were such as to significantly influence the

court. It is very likely, therefore, that the court's erroneous denial of Ms. Brown's right to be afforded the same opportunity to respond to the court's invitation that the Commonwealth had been afforded prejudicially increased Ms. Brown's sentence.

b. Ms. Brown was Deprived of her Right Not to Twice be put in Jeopardy for the Commission of a Single Offense

The U.S. Constitution, as well as cognate provisions of the Massachusetts Constitution and common law, protect against the imposition of multiple punishments for the same offense. However, civil restrictions on liberty do not trigger these protections. Deciding whether a restriction on liberty is civil or criminal in nature is a two-step process.

First, the court determines whether the legislative intent of the law authorizing the restriction on liberty was for that law to be criminal or "civil in nature." Hudson v. United States, 522 U.S. 93, 103 (1997). If the legislature intended the law to be civil, the court then determines whether the record contains "the clearest proof that a deprivation of liberty, purportedly effected for regulatory purposes, was actually punitive"; such proof "suffice[s] to override legislative intent and transform what has been

denominated a civil remedy into a criminal penalty." Hudson, 522 U.S. at 100 (quotations omitted).[4]

While restrictions on liberty imposed pursuant to G.L. c. 276, § 58 ("Bail Statute") were intended to be civil rather than criminal, the record in this case contains "the clearest proof" that the revocation of Ms. Brown's bail during her sentencing hearing was designed to, and did in fact punish Ms. Brown for the crimes she had just been convicted of. This proof includes the court's failure to adhere to the procedural protections prescribed by the Bail Statute, its failure to consider any of the substantive factors dictated by the Bail Statute, and the court's outright admission that its revocation of Ms. Brown's bail was not designed to give effect to the legislative intent underlying the Bail Statute, but rather to "get [Ms. Brown's] attention."

Regarding the Bail Statute's purpose, the

"principal legislative purpose of § 58 is 'to protect the rights of the defendant by establishing a presumption that he or she will be admitted to bail on personal recognizance without surety and by delineating carefully the circumstances under which bail may be

[4] The Supreme Judicial Court has held that Hudson also applies to this analysis under state law. Powers v. Com., 426 Mass. 534, 537-40 (1998).

denied.'" Com. v. Pagan, 445 Mass. 315, 319, (2005) (quotation omitted). To serve this purpose, the law requires courts to enter written orders stating their reasons for revoking bail.[5] In further service of its legislative intent, the general court also prescribed substantive factors for courts to consider in deciding whether to revoke a defendant's bail.[6]

Here, the sentencing court flouted the procedural requirements of the Bail Statute by failing to enter any order, written or otherwise, and it ignored all of the substantive factors in the Bail Statute. Instead, as Ms. Brown attempted to make sentencing argument, the court interrupted her saying "I'm not going to hear your side," and then abruptly revoked her bail, stating only "I'm going to hold her in custody pending further hearing."[7]

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[5] Aside from "default[ing] on his recognizance or [being] surrendered by a probation officer," the only reasons why a court may revoke bail are if "changed circumstances" reveal that "bail or recognizance [are] ineffective to reasonably assure the appearance of said defendant before the court," or "that the release of said person will seriously endanger any person or the community and that the detention of the person is necessary to reasonably assure the safety of any person or the community . . . ." G.L. c. 276, § 58.

[6] These substantive factors are reproduced in the copy of G.L. c. 276, § 58 in the addendum. (Add.11 [risk-of-flight factors]; Add.13-14 [dangerousness factors]).

[7] The manner by which bail was revoked is an important part of the "clearest proof" that the revocation was punitive, so Ms. Brown submitted a disc containing an

When Ms. Brown's sentencing hearing was reconvened, the court made clear that the purpose underlying its revocation was neither that "bail or recognizance [were] ineffective to reasonably assure the appearance of" Ms. Brown, nor "that the release of [Ms. Brown would] seriously endanger any person or the community," G.L. c. 276, § 58, but was instead to get Ms. Brown's "attention by holding [her] over the weekend in custody . . . ."

Far from giving effect to the Bail Statute's "principal legislative purpose of [protecting] the rights of the defendant" Pagan, 445 Mass. at 319 (quotation omitted), the sentencing court's revocation of Ms. Brown's bail had both the effect and the purpose of punishing her for the crimes that she had been convicted of, while avoiding the formal imposition of a sentence on those convictions. The following week, the court did impose a sentence on those convictions and, because its earlier revocation of Ms. Brown bail already had inflicted punishment on Ms. Brown for the acts she had been convicted of having committed, the subsequent imposition of this sentence violated Ms. Brown's double-

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audio recording of the revocation to the Appeals Court. (R.120). This disc was also submitted to the trial court with Ms. Brown's Motion below, so it is properly part of the record. (R.47, 65-66).

jeopardy protections under state and federal law.

The ramifications of countenancing this mode of sentencing are dire. While Massachusetts judges exercise the discretion they are afforded with great care and wisdom, specifics laws often delineate the scope of that discretion precisely. Such delineations increase in importance as the effect that the laws containing them have on the rights of Massachusetts citizens become more severe, with restrictions on liberty (such as those authorized by the Bail Statute), being the most severe effect on citizens' rights.

In addition to the limited scope of discretion that judges are afforded by the Bail Statute, Massachusetts citizens' liberty interests are also protected by the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, and cognate provisions of the Massachusetts Constitution and common law, which prohibit the imposition of multiple punishments for the commission of one criminal offense. Here, all of these protections were flouted by a judge wishing to get a defendant's "attention" by depriving her of her liberty, while neither having to formally impose a sentence, nor having to adhere to the procedural and substantive requirements of the Bail Statue. This is a practice

that must be strongly condemned, lest judges be afforded the discretion to deprive citizens of their liberty simply as a means to get those citizens' "attention," without the citizens having any effective means to challenge or avoid such deprivations.

Vacatur of Ms. Brown's sentence and an order prohibiting re-trial comprise the only relief capable of properly remedying this error. If the sentencing court's imposition of a sentence, after its having revoked Ms. Brown's bail as a punitive means to get her "attention," is allowed to stand, it will eviscerate both the Bail Statute's protections for criminal defendant's liberty, as well as Ms. Brown's double-jeopardy rights. If all that is done to remedy this error is to vacate Ms. Brown's sentence, any resentencing of Ms. Brown will violate double jeopardy because the revocation of Ms. Brown's bail already served to punish her for her crimes of conviction.[8]

[8] The same relief is appropriate if the court revoked Ms. Brown's bail to punish her for her attempted allocution. Com. v. Lewis, 41 Mass. App. Ct. 910, 911 (1996) {error for court to "punish a defendant for any conduct other than that for [she] stands convicted").

VI. Statement of Reasons For Direct Appellate Review

Direct Appellate Review should be granted because the instant case presents questions of law concerning the Constitution of the Commonwealth and questions of such public interest that justice requires a final determination by the full Supreme Judicial Court.

The constitutional questions presented by this case are whether the Massachusetts Constitution guarantees allocution, and whether the Massachusetts Constitution permits formal sentences to be imposed on the heels of punitive bail revocations. The Massachusetts Constitution affords defendants a greater extent of protection in a number of arenas, yet no Massachusetts court has ever recognized a right to allocution or any double-jeopardy rights as arising out of our Commonwealth's constitution. See Powers, 426 Mass. at n. 5 ("Although not expressly included in the Massachusetts Declaration of Rights, this Commonwealth has long recognized a State common law and statutory prohibition against double jeopardy."); Curry, 6 Mass. App. Ct. at 928 ("[T]he defendant ha[s] no constitutional or other right of allocution.").

This Court should clarify that Massachusetts defendants do have constitutional rights to allocution

and against being repeatedly jeopardized, and that those rights were violated in the circumstances of this case. This is especially true regarding a right of allocution, as the Supreme Court has "[a]ssum[ed], without deciding, that the [U.S.] Constitution does require such an opportunity . . . ." McGautha, 402 U.S. at 218-19.

This is a matter of public interest because allocution is an ancient right whose importance was explicitly recognized in the Reporter's Notes accompanying the very first edition of the Massachusetts Rules of Criminal Procedure. Mass. R. Crim. Pro. 28, Reporter's Notes (quoting Green, 365 U.S. at 304) ("'The most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself.").

If a judge's decision to not only deprive a defendant of allocution, but also to punitivlt revoke a defendant's bail is allowed to stand, it will open up a new form of discretion to sentencing judges by which they can revoke bail, not to prevent flight or undue dangerousness, but instead as a punitive measure to get convicts' attention; then, having satisfied themselves that they have held the convicts for enough time to get their attention, sentencing courts could impose

additional punitive sentences. This would imperil criminal defendants' liberty interests in precisely the ways that the ancient right of allocution, the Bail Statute, and double-jeopardy protections were designed and intended to protect against

Finally, this question requires a final determination by the full Supreme Judicial Court. First, the Appeals Court has repeatedly held that "a defendant ha[s] no constitutional or other rights to allocution," Com. v. Whitford, 16 Mass. App. Ct. 448, 455 (1983); see also Com. v. Rosadilla-Gonzalez, 20 Mass. App. Ct. 407, 416 (1985) ("[J]udges are only required to afford the defendant *or* his counsel an opportunity to speak.") (emphasis in original), and the Appeals Court has not indicated any willingness to revisit this precedent. Second, this Court can impose prophylactic sentencing procedures pursuant to its superintendence power that would prevent the kind of errors that occurred here, and this superintendence power is not available to the Appeals Court. Cf. Com. v. Abdul-Alim, No. 15-P-1219, 2017 WL 951216, at n. 12 (Mar. 9, 2017) ("To the extent the defendant asks us to make a rule that judges must instruct jurors never to communicate how they are split,

we lack the authority to impose such a prophylactic rule.”).

VII. Conclusion

For the above-stated reasons, the court should grant direct appellate review, and reverse the Trial Court’s judgments and sentence on Ms. Brown’s convictions.

Respectfully submitted,
The Defendant-Appellant,
By his attorneys,
KJC Law Firm, LLC

_____/s/Luke Rosseel_____
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VIII. Application Appendix

CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Johnelle M Brown	DOCKET NUMBER 1452CR000742

DATE	DOCKET ENTRIES
6/10/14	Deft Dr Ct. VOL. W/Removed.
7/17/14	Deft's Attorney, Nicole Onbhaber, appearance filed
" "	Atty Reg of Deft's Att.
9/17/14	Comm's Notice of Discovery I- filed
10/30/14	Comm Rule 17 Mos. (a) and proposed Orders filed,
	Allowed; So Ordered Barnes J
12/24/14	Commonwealths Notice of Discovery II (Filed)
1/2/15	Commonwealth's Notice of Discovery III filed
1/21/15	LC Crt rm 3 S) 10:39am E) 10:45am Hogan J
"	JURY TRIAL
	Crt Rm 3 S) 12:30pm E) 1pm
	S) 1:25pm E) 1:35pm
	S) 2pm E) 4:pm
	cont. 1/22/15 Cont. of Jury Trial
	same posted bail Hogan. J
1/22/15	Cont. of JT
	Crt rm 3 S) 11:13am E) 12 noon
	verdict S) 12:40am E) 12:51
	C. 1/26/15 held w/o bail pending sentencing
1-26-15	Mahbobe Ana's Impact Statement filed (given Pet.
1-26-15	Disp. Imposed:
	Ct. 1: 1 yr. HOC susp 1-26-17 • S/A N/C WITH VICTIM + M/A CHICKEN
	Ct 2: 1 yr. HOC susp 1-26-17 • ANGER MGT. • M.H. Eval + F/U
	• PAY REST. • OTHER CONDITI PURS TO PROB. DR
	C. 2/23/15 Rest Hrg (3) Hogan J

APPROVED ABBREVIATIONS
ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review
SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate
DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing.

CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Johnelle M Brown	DOCKET NUMBER 1452CR000742

DATE	DOCKET ENTRIES
	Deft's
2/5/15	Notice of Appeal - filed.
2-23-15	Restitution (H)
	The Court after (H) orders restitution
	to be $3,100.00. Crane, J
3/26/15	Request assignment of counsel - filed.
	Atty Luke Rosseel Appointed for Appeal.
3/24/15	Atty's app. filed Luke Rosseel
5/8/15	Atty's Withdrawal Email Mohamed - Filed
5/11/15	Allowed. Hogan, J
8/5/15	Notice of Prob Vld - filed; Prob Surr cnfr
9/10/15	VOP withdrawn; c. 1-26-17 Prob Review Hogan J
3/15/16	Checked Bounced. Cont'd for payment.
4/28/16	
4/6/2016	Johnelle M. Brown's motion Pursuant
	to Mass R. Crim. P. 30 (B) and (3:5) (Filed)
4/6/2016	Affidavit of Luke Rosseel Esq. (Filed)
5/25/16	JS for J. Hogan Hogan
4/29/16	(Deft bounced check)
5/2/16	Email Mohammed affidavit - filed
5/19/16	Deft's Joint Motion to Reschedule Hearing from the May 25 Hearing and Set Hearing

APPROVED ABBERIVATIONS

ARR = Arraignment PT= Pretrial hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR= Status review
SRP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate
DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled PR = probation revocation hearing

CRIMINAL DOCKET
DOCKET ENTRIES

DEFENDANT NAME: Johnelle M Brown

DOCKET NUMBER: 1452CR000742

DATE	DOCKET ENTRIES
5/19/16	Parties joint motion to narrow issues for the May 27, 2016 hearing & schedule subsequent hearing - Allowed
	c. 7-13-16 (M3) before Judge Hogan
6/27/16	Comm's Motion to set a non-evidentiary hearing on Deft's Rule 30 Motion - Allowed
" "	Comm's opposition to Deft's Mot pursuant to Rule (30(B) and 31(D)
6/29/16	" " Allowed Hogan J.
"	DA & Def Atty notified
7/11/16	Deft's Reply to Comm's opp to Johnelle M. Brown's Motion pursuant to Mass R. Crim. P. (30(B) and 31(D)
12/16/16	Deft's Mo. Pursuant to Mass. R. Crim. P. 30(B) and 31(D) - Denied under all theories Hogan J.
12/6/16	Deft's Mo to Resolve Restitution, supporting affidavits of Luke Rosseel and Johnelle Brown, and proposed Order - Filed
12/22/16	c. 1-3-17 Rest Hrg (for J. Hogan) Hogan J. orders that restitution, ~~shall~~ terminate Def't discharged
1/3/17	Notice of Appeal filed by Atty Luke Rosseel

APPROVED ABBERIVATIONS
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SRP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate
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The hearing is already scheduled for July 13, 2016. It will be a non-evidentiary hearing. The judge will not entertain any testimony.
J Hogan 6-29-16

April 5, 2016

Via first class mail

Cambridge District Court
Criminal Clerk's Office
4040 Mystic Valley Pkwy
Medford, Massachusetts 02155

re: Commonwealth v. Brown, Cambridge District Court, Docket No. 1452CR0742

Dear Sir or Madam,

Enclosed for filing in the above-referenced matter, please find the following:

1. Johnelle M. Brown's Motion Pursuant To Mass. R. Crim. P. 30(B) and 31(D);
2. Memorandum of Law and Accompanying Affidavits in Support of Johnelle M. Brown's Motion Pursuant To Mass. R. Crim. P. 30(B) and 31(D); and
3. Certificates of Service.

Thank you.

Very truly yours,

Luke Rosseel

cc: Office of the Middlesex District Attorney, 15 Commonwealth Avenue, Woburn, MA 01801

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

DISTRICT COURT DEPARTMENT
DOCKET NUMBER 1452CR0742

COMMONWEALTH OF MASSACHUSETTS)

v.

JOHNELLE M. BROWN,)

Motion denied under all theories. Hogan 12-16-16

APR -6 2016

JOHNELLE M. BROWN'S MOTION PURSUANT TO MASS. R. CRIM. P. 30(B) and 31(D)

Johnelle M. Brown hereby moves the court to provide her with the following relief pursuant to Mass. R. Crim. P. 30(b) and 31(d):

1. To vacate the sentence and judgment imposed on the jury's verdict in the above-captioned matter, and to either dismiss the complaint that issued against Ms. Brown in the above-captioned matter with prejudice, or to enter an order forbidding the prosecution of Ms. Brown for the acts that were the subject of that complaint on Double-Jeopardy grounds;

2. In the alternative, should the court be disinclined to grant that relief, to vacate the sentence and judgment imposed on the jury's verdict in the above-captioned matter;

3. In addition, and not in the alternative to any other relief being requested, to enter an order requiring that the contact information of the jurors who convicted Ms. Brown be made available to her, and to enter an order permitting Ms. Brown to contact the jurors who convicted her in order to inquire into whether they performed internet research on her during her trial, and whether any such research was ever discussed among the jurors; and

4. In addition, and not in the alternative to any other relief being requested, to stay execution of so much of Ms. Brown's presently imposed sentence in the above-captioned matter as is obliging Ms. Brown to make restitution payments.

In support of this motion, Ms. Brown relies upon and submits the memorandum of law, affidavits, and exhibits thereto being filed contemporaneously herewith. Moreover, with regard to her request for a stay of her sentence, for the reasons set forth in the accompanying

Certificate of Service

I, Luke Rosseel, KJC Law Firm, LLC, counsel for the Defendant-Appellant in the above-captioned action, this Seventeenth Day of March, 2017, hereby certify, under penalties of perjury, that I served the Defendant-Appellant's Application for Direct Appellate Review, Motion to File Application for Direct Appellate Review Late, and Affidavit in Support of Motion to File Application for Direct Appellate Review Late on the following counsel of record by First Class Mail:

Thomas D. Ralph
Middlesex District Attorney's Office
15 Commonwealth Avenue
Woburn, MA 01801

_____/s/ Luke Rosseel_____
Luke Rosseel